



In the Matter of

DOMINIQUE ANTCHANGO
Petitioner

CASE NO. 90-TLC-2

DECISION AND ORDER

This matter arises under Section 218 of the Immigration and Nationality Act, 8 U.S.C. §1188, and the regulations promulgated thereunder for the processing of temporary labor certification applications, 20 C.F.R. Section 655 et. seq. Under the Act and regulations a petitioner for nonimmigrant temporary (H-2A) workers must establish that (1) there are not sufficient U.S. workers who are able, willing and qualified, and who will be available at the time and place needed, to perform the labor or services involved in the petition, and (2) the employment of the temporary worker will not adversely affect the wages and working conditions of workers in the United states similarly employed.

The petitioner's application, as amended, for the temporary employment of 3 Shepherders was conditionally accepted on September 13, 1989. The starting date for such employment was to be October 28, 1989. Initially, the California Employment Development Department (CEDD) referred four applicants to the petitioner. One was hired. Another was reportedly hired but quit after 2 days. The third did not show for an interview. The fourth showed up for work when the petitioner was "out working" and although he left a message that he would, he failed to return. The CEDD then referred two more workers, Ernest0 Ambriz and Jorge Barrios. The results of these referrals had not been furnished by October 6, 1989, when the request for certification was denied on the basis that there were enough U.S. workers . available to fill the job openings. The petitioner thereafter appealed this decision contending that only one of the six referrals stayed on the job.

The hiring of one of the referrals reduced the Petitioner's requirements to two shepherders. The Petitioner has not documented why the latest two referrals could not fill these vacancies. Pursuant to Section 655.112(a) of the regulations, I am precluded from remanding this case or receiving additional evidence. Accordingly, I must agree with the determination in this case that there are available U.S. workers to fill the remaining vacancies.

ORDER

The Petitioner's application for temporary labor certification is Denied.

JOEL R. WILLIAMS
Administrative Law Judge

Dated: 13 NOV 1989
Washington, D.C.